IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 411 of 1999.

Reserved on: 18.12.2006.

Date of decision: 27 .12.2006.

State of H.P. ... Appellant

Versus

Dalip Singh & Others. … Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. Ashutosh Burathoki, Additional Advocate General.

For the respondents: Mr. Vinod Gupta, Advocate, for respondents No. 1,2 and 4 to 6.

V.K. Ahuja, J.:

This appeal has been filed by appellant/State of H.P. against the judgment of the Court of learned Additional Chief Judicial Magistrate, Ghumarwin, dated 28.6.1999, vide which the respondents were acquitted of the charge framed under Sections 147, 149, 447, 427, 323, 325 and 506 I.P.C.

Briefly stated the facts of the case are t hat on 20.5.1994 , at about 5.50P.M., a report was lodged with the police by one Amar Nath that a road passes from their land and they have taken a stay order against the construction of this road. However, it was alleged that the

[1]Whether reporters of Local Papers may be allowed to see the judgment? No.

villagers of villages Bhundal, Ladar, Kot, Jhinwari and Tikkar forcibly wanted to take tractors from this road. It was alleged that at about 12.00 during day time, the male and female members from these villages came there and when they prevented them, Paras Ram, Mudail, Prakash Chand son of Hari Ram and Brij Lal gave blows on the person of his father with danda, legs, fists and stones. He further alleged that several other persons including women named by him destroyed their crop and also gave beatings to their family members and while leaving the place they also gave a threat. On this report, a case was registered. After investigation, the challan was filed against six respondents who were tried by the learned trial Court as mentioned above resulting in their acquittal.

I have heard Mr. Ashutosh Burathoki, learned Additional Advocate General, for the appellant and Mr. Vinod Gupta, learned counsel for the respondents and have gone through the record.

The submissions made by the learned Additional Advocate General were that there was sufficient evidence on record consisting of the statement of complainant, his father/injured and other persons of the family of the complainant and simply because the witnesses are related to one another was no ground to disbelieve their version, therefore, the findings of the learned trial Court to the contrary are liable to be reversed. On the other hand, the learned counsel for the respondents had supported the impugned judgment for the reasons mentioned therein.

Coming to the evidence PW1 Amar Nath in his report had named four persons who had given beatings to his father and also mentioned the names of other persons who destroyed their crop and gave beatings to other family members. In his report, the complainant

had named Paras Ram, Mudail, Prakash Chand and Brij Lal having given the blows, but when PW1 appeared in Court he named the persons who gave beatings as Dalip Singh and Jai Lal also apart from Paras Ram and Beli Ram. The names of Beli Ram, Dalip Singh and Jai Lal were not mentioned in the first report Ext. PW11/A lodged in the police. He thereafter stated the names of three other persons who also gave beatings to his father with legs and fists and only the name of Brij Lal and Prakash Chand had been mentioned, but not the name of Durga in the first report. He further stated that the also suffered injuries at that time which he had not alleged in his first report. He admitted that he had not mentioned about the injury to him and two of his family members, namely, Tripta Devi and Urmila Devi. He stated that there were 25-30 persons from village Bhundal.

PW2 Tripta Devi, daughter-in-law of injured Dhani Ram, had stated that these blows were given by Dalip Singh, Jai Lal, Paras Ram, Beli Ram, Prakash Chand and Durga Dass on the person of his father-in-law who was injured. She stated that she also suffered injuries though her name was not mentioned in the report lodged with the police. She further admitted about the presence of several other persons numbering 40-50 persons who had allegedly given them blows. PW3 Dev Raj, grandson of the injured Dhani Ram had stated that Jai Lal, Dalip Singh had caught hold of his grand-father from his hand and Beli Ram and Paras Ram gave blows with sticks, legs and fists. He thereafter stated the names of three other persons who gave beatings with legs and fists as well as with stones about which no other witness had stated. He stated that he cannot say about the injuries suffered by his mother and other

persons though he suffered minor injuries. He stated about the presence of several other persons who had come with tractors.

PW4 Smt. Urmila Devi also stated about the injuries and stated that 40-50 persons came there, entered the land and the accused persons gave beatings to her father-in-law, but she did not name the accused persons or the part played by them. She stated that she also suffered injuries on her body and was unconscious for 4-5 days.

PW5 Sunder Ram had only stated that the road had also been taken out of his land and he admitted that he along with Dhani Ram had given in writing to the Xen P.W.D allowing him to construct the road from their land. He was also confronted with the said letter in writing having signatures of both these persons which is Ext.PW5/A. This clearly shows that he had granted the permission for construction of the road, but thereafter they had objected to the same.

PW7 Dhani Ram, injured, himself had stated that Paras Ram and Dalip Singh came along with the villagers of 2-3 villages and while Paras Ram caught hold of him and gave blows and Jai Lal was also accompanying him, but he does not remember the names of other persons who gave him blows. This clearly shows that the principal witness who was given the injuries himself had not named all the accused persons who inflicted blows upon his person. PW9 Chinti Devi, daughter-in-law of injured Dhani Ram had also stated that Dalip Singh and Jai Lal came along with other persons and five other persons named by her gave beatings to her father-in-law with lathis, legs and fists. She admitted that there were more 40-50 persons including 30-35 women who came there and gave beatings to her father-in-law. The medical certificate of only Dhani Ram, PW7 was proved in evidence from the statement of PW10

Dr. T.S. Chandel and medical certificate of no other person was proved from the evidence.

The learned trial Court had referred to the testimony of the witnesses as well as the contradictions and infirmities in their statements and had concluded that that these statements are such which cannot be relied upon to hold that the prosecution case stands proved.

To substantiate his point that the appellate Court cannot draw its own conclusion if the conclusion drawn by the trial Court was reasonable, he has relied upon the two decisions of the Hon'ble Apex Court in this regard. The decision reported in **State of Kerala** Vs. **Nazar**, **(2005) 9 Supreme Court Cases 246**, shows that the conclusion reached by the High Court was reasonable which could reasonably be taken on the basis of evidence on record. Hence, even if another view is possible, order of acquittal must be sustained.

The decision in **Pramod Mandal** Vs. **State of Bihar**, **(2004) 13 Supreme Court Cases 150**, shows that in an appeal against acquittal, if view taken by the trial Court is found to be a possible reasonable view, appellate Court should not interfere with it.

The dictum of law laid down by the Hon'ble Apex Court in both the above mentioned cases applies to the present facts on all fore. Applying the observations made in the above two cases, it is clear that the view taken by the learned trial Court can be said to be a reasonable view and cannot be termed as perverse calling for an interference by this Court and as such, the appeal filed by the appellant is dismissed

accordingly. Bail bonds stand discharged forthwith. A copy of the judgment along with record be sent to the concerned Court.

(V.K. Ahuja),
Judge

December 27, 2006
(BSS)